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PLR-103084-10

Date:

May 20, 2010

Distributing 1 =

Distributing 2 =

Controlled 1 =

Controlled 2 =

FSub 1 =

FSub 2 =

FSub 3 =

FSub 4 =

Sub 5 =

Sub 6 =

FSub 7 =

Sub 8 =

Sub 9 =

Sub 10 =

Other Business A =  
Entities (US)

DRE 1 =

DRE 2 =

DRE 3 =

DRE 4 =

DRE 5 =

DRE 6 =

DRE 7 =

DRE 8 =

DRE 9 =

FDRE 1 =

LLC 1 =

LLC 2 =

LLC 3 =

LLC 4 =

LLC 5 =

PLR-103084-10

5

LLC 6 =

LLC 7 =

Newco =

Business A =

Business B =

Business C =

Business D =

Business E =

Business F =

Division A =

Division B =

Property A =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

k =

l =

m =

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o =

p =

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aa =

bb =

cc =

dd =

Individual A =

Individual B =

Individual C =

Investor A =

Investor B =

Investor C =

Investor D =

Corporation A =

Country A =

Exchange =

State A =

State B =

State C =

Dear \_\_\_\_\_ :

This letter responds to your January 21, 2010 request for rulings as to the federal income tax consequences of a proposed transaction described below (the "Proposed Transaction"). The information received in that request and in subsequent correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. In particular, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the Controlled 1 Distribution and the Controlled 2 Distribution (defined below): (i) satisfy the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations; (ii) are used principally as a device for the distribution of the earnings and profits of any distributing corporation or controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code (the "Code") and § 1.355-2(d)); or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in any distributing corporation or controlled corporation or both (see § 355(e) and § 1.355-7).

### **Summary of Facts**

Distributing 2 is a publicly traded corporation and the common parent of an affiliated group that files a consolidated federal income tax return with its eligible members on a calendar year basis (the "Distributing 2 Group"). At the time of the Proposed Transaction, it is expected that Distributing 2 will have only common stock outstanding and that only four shareholders will own more than five percent of this stock. The four shareholders are: Investor A and certain of its affiliates, Investor B, Investor C, and Investor D. Distributing 2, directly and through its affiliated entities, conducts Business A, Business B, Business C, Business D, Business E, and Business F.

Distributing 2 wholly owns Controlled 2, Distributing 1, DRE 1, DRE 2, Sub 5, and each of the Other Business A Entities (US). Distributing 2 also owns a percent of FSub 1, g percent of LLC 4, and h percent of Sub 6. The remaining interest in LLC 4 is owned by Sub 5, and the remaining stock in Sub 6 is owned i percent by LLC 4 and j percent by Sub 5. Sub 5 also owns k-percent membership interests in LLC 5 and LLC 6 and b percent of FSub 2 stock. The remaining l-percent interests in LLC 5 and LLC 6 are owned by Corporation A, a corporation unrelated to the Distributing 2 Group.

Before Date 5, LLC 5 wholly owned DRE 4 and DRE 5; DRE 4 wholly owned DRE 6; and DRE 5 owned greater than f percent of FSub 7, the remaining interest in which is owned by Distributing 2. DRE 6 wholly owns Sub 8 and DRE 7. LLC 6 wholly owns DRE 8, and DRE 8 wholly owns Sub 9. Distributing 1 owns all the stock of DRE 3, the remaining b percent of the stock of FSub 2, and the following membership interests: c percent of LLC 1, c percent of LLC 2, and d percent of LLC 3. Sub 6 owns the remaining dd percent interest in LLC 3. DRE 1 owns all the interests in FDRE 1, all the stock of FSub 3, and less than e percent of FSub 4. FSub 3 owns the remaining more than f percent of FSub 4.

Controlled 2, Distributing 1, Sub 5, Sub 6, Sub 8, Sub 9, FSub 1, FSub 2, FSub 3, and FSub 4, and FSub 7 are all corporations. DRE 1, DRE 2, DRE 3, DRE 4, DRE 5, DRE 6, DRE 7, DRE 8, and FDRE 1 are disregarded as separate from their owners under § 301.7701-3 (each, a “disregarded entity”). LLC 1, LLC 2, LLC 3, LLC 4, LLC 5, and LLC 6 are all limited liability companies classified as partnerships for federal income tax purposes.

The financial information submitted by Distributing 2 indicates that Business D conducted by Distributing 1, Business C conducted by LLC 1, Business E conducted by LLC 5, and Business F conducted by DRE 5 have each had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

The Proposed Transaction will separate Business A from Business B (the “Separation”) and as a result eliminate the holding company discount currently burdening the stock of Distributing 2. This will allow Distributing 2 (with its Business B) and Controlled 2 (with its Business A) to trade more in line with their industry peers and is expected to increase the aggregate value of the two enterprises over the value the Distributing 2 stock would have without the Separation. As a result of this increased value, each company will be able to issue equity in connection with acquisitions and employee compensation on more favorable terms with less dilution to existing shareholders. In addition, separating Business B from the credit constraints of Business A will permit the entities operating Business B to optimize its capital structure by increasing debt to a level more in line with its competitors.

### **Proposed Transaction**

To separate Business A from Business B and thus achieve the business purposes described above, Distributing 2 has proposed (and partially completed) the following series of transactions:

- (i) Before the Controlled 2 Distribution (as defined below), any excess loss account in the stock of an entity that will leave the Distributing 2 Group will be eliminated.

- (ii) On Date 2, after Distributing 2 decided that economic circumstances were favorable enough to justify moving forward with its long-planned separation of Business A from Business B, Distributing 1 made an \$m cash distribution to Distributing 2 (the “Date 2 Cash Distribution”). The purpose of the distribution was to provide Distributing 2 with cash to meet its expected liquidity needs after the Separation. The distribution was made at this time to avoid regulatory limitations that could apply to a distribution made at a later date.
- (iii) On Date 3, (i) Sub 5 distributed its b-percent stock interest in FSub 2 to Distributing 2 (the “FSub 2 Distribution”), and (ii) Distributing 2 contributed the FSub 2 stock to Distributing 1 (the “FSub 2 Contribution”). The FSub 2 Distribution and FSub 2 Contribution originally were to occur at the same time as the Distributing 1 Taxable Purchase (see Step (xviii) below) but were accelerated to bolster the regulatory capital of Distributing 1 in preparation for the Separation.
- (iv) On Date 4, Distributing 1 made an \$m cash distribution to Distributing 2 (the “Date 4 Cash Distribution”). As with the Date 2 Cash Distribution (Step (ii) above), the purpose of this distribution was to provide Distributing 2 with cash to meet expected liquidity needs after the Separation. The distribution was made at this time to avoid regulatory limitations that could apply to a distribution made at a later date. With the exception of a loan made to Controlled 2 on Date 6 (Step (ix) below), this cash and the cash distributed in the Date 2 Cash Distribution are being held in a segregated account (the “Segregated Account”).
- (v) On Date 5, DRE 5 contributed substantially all of its U.S. Business A assets (including Business F) to newly formed DRE 9, a domestic disregarded entity, in exchange for all of the membership interests in DRE 9 and the assumption by DRE 9 of related liabilities (if any) (the “DRE 9 Contribution”).
- (vi) On Date 5, DRE 5 distributed the membership interests in DRE 9 to LLC 5.
- (vii) On Date 5, LLC 5 distributed the membership interests in DRE 4, DRE 5, and DRE 9 to its two members, Sub 5 and Corporation A, pro rata (the “LLC 5 Partnership Distributions”).
- (viii) On Date 5, Distributing 1 purchased Corporation A’s l-percent interests in DRE 4, DRE 9, and LLC 6 for an aggregate \$n in cash, and Sub 5 purchased Corporation A’s l-percent interest in DRE 5 for \$o in cash.

- (ix) On Date 6, Controlled 2 borrowed \$p from Distributing 2 to pay certain administrative, overhead, and other expenses of the entities operating Business A that will be incurred in advance of the Separation (the “Intercompany Loan”). Controlled 2 will repay the Intercompany Loan before the Controlled 2 Distribution with funds from a new third party borrowing (Step (xxi) below).
- (x) On Date 7, in a demerger transaction under Country A law, FSub 7 transferred its Business A assets to FSub 4, a pre-existing foreign corporation capitalized with nominal assets. In the demerger, shares representing approximately g-percent of the FSub 4 stock were issued pro rata to the existing shareholders of FSub 7.
- (xi) Sub 5 will contribute its cc-percent membership interest in LLC 4 to newly formed Sub 10, a domestic corporation, in exchange for all of the Sub 10 stock.
- (xii) Sub 5 will convert under State A law to a single-member limited liability company treated as a disregarded entity (the “Sub 5 LLC Conversion”).
- (xiii) DRE 5 will distribute its g-percent interest in FSub 4 to Sub 5.
- (xiv) Sub 5 will distribute its k-percent membership interests in DRE 4, DRE 9, and LLC 6 and its stock in FSub 4 to Distributing 2.
- (xv) DRE 1 will distribute its membership interest in FDRE 1 to Distributing 2.
- (xvi) Distributing 2 will contribute its FSub 4 stock to DRE 1.
- (xvii) DRE 1 will contribute its FSub 4 stock to FSub 3 in constructive exchange for additional shares of FSub 3 stock.
- (xviii) Distributing 1 will purchase the following assets from Distributing 2 (the “Distributing 1 Taxable Purchase”): d-percent membership interests in DRE 4, DRE 9, and LLC 6; all of the membership interests in DRE 2 and DRE 1; b percent of the FSub 2 stock (see Step (iii) above); and \$r of newly issued Distributing 2 common shares (the “Distributing 1 Equity Retention”); for consideration consisting of: the \$m Date 2 Cash Distribution (see Step (ii) above); the \$m Date 4 Cash Distribution (see Step (iv) above); \$s in cash; a \$t reduction of an unsecured intercompany receivable from Distributing 2; a \$u reduction of a secured intercompany receivable from Distributing 2; a c-percent interest in LLC 2; and a d-percent membership interest in LLC 3.

The aggregate fair market value of the consideration paid by Distributing 1 to Distributing 2 in the Distributing 1 Taxable Purchase (net of liabilities assumed, within the meaning of § 357(d)) will exceed the aggregate fair market value of the assets received by Distributing 1 (net of liabilities assumed, within the meaning of § 357(d)) in the exchange. The excess is referred to as the “Taxable Purchase Excess.”

- (xix) Distributing 1 will contribute Division A and Division B, Property A, and its c-percent membership interest in LLC 1 to newly formed Controlled 1 in exchange for all of the Controlled 1 stock and the assumption by Controlled 1 of related liabilities (if any) (the “Controlled 1 Contribution”).
- (xx) Distributing 1 will distribute the Controlled 1 stock to Distributing 2 (the “Controlled 1 Distribution”).
- (xxi) At or around the time of the Controlled 2 Contribution (Step (xxii)), but in any event before the Controlled 2 Distribution (Step (xxiv)), Controlled 2 will borrow \$y from a third party, use \$p of the proceeds to repay the Intercompany Loan from Distributing 2 (Step (ix)), and distribute the remaining \$w to Distributing 2 in the Controlled 2 Contribution (the “Controlled 2 Borrowing”).
- (xxii) Distributing 2 will contribute the following assets to Controlled 2 (the “Controlled 2 Contribution”): all of its Business A assets (including the stock of Distributing 1 and FSub 1; b-percent membership interests in DRE 4, DRE 9, and LLC 6; and the stock or membership interests in, and all the properties of, the Other Business A Entities (US)); a State A office building and b-percent interest in a State B corporate condominium; \$s of newly issued Distributing 2 common shares (the “Controlled 2 Equity Retention” and together with the Distributing 1 Equity Retention, the “Retained Stock”); and an \$x pension note (the “Pension Note”); in exchange for: \$w of cash proceeds from the Controlled 2 Borrowing (the “Distributed Cash Proceeds”), which Distributing 2 will use to pay down its third-party debt; the assumption by Controlled 2 of a \$y secured intercompany payable owing from Distributing 2 to Distributing 1 (the “Distributing 2 Secured Payable”); the assumption by Controlled 2 of a \$z pension liability; the assumption by Controlled 2 of liabilities (if any) associated with the contributed assets; and the issuance of additional shares of Controlled 2 stock.

The group of corporations operating Business A will be referred to as the “Controlled 2 Group.”

- (xxiii) Distributing 1 and Controlled 2 each will contribute its b-percent interests in DRE 9, LLC 6, and DRE 4 to LLC 7, a newly formed limited liability

company in exchange for a b-percent membership interest in LLC 7 (the “LLC 7 Contribution”).

- (xxiv) The Controlled 2 stock will be subdivided and converted into that number of shares of Controlled 2 stock necessary to effect the Controlled 2 Distribution. Distributing 2 then will (i) distribute the Controlled 2 stock to its shareholders pro rata (the “Controlled 2 Distribution”) and (ii) apply the Distributed Cash Proceeds to the payment of third-party indebtedness (the “Debt Payment”). The Controlled 2 shares issued to Controlled 2 and Distributing 1 in the Controlled 2 Distribution will cancel immediately upon receipt (the “Controlled 2 Stock Cancellation”).

The number of Distributing 2 shares issued to Controlled 2 and Distributing 1 in the Controlled 2 Contribution (Step (xxii)) and the Distributing 1 Taxable Purchase (Step (xviii)) will be designed to give Controlled 2 and Distributing 1 as close to \$s and \$r, respectively, in Distributing 2 common shares as possible immediately after the Controlled 2 Distribution and the Controlled 2 Stock Cancellation. However, since the number of shares issued in the Controlled 2 Contribution and the Distributing 1 Taxable Purchase will be determined on the record date for the Controlled 2 Distribution rather than immediately after the Controlled 2 Distribution, any market value volatility between the record date and the distribution date will result in greater or less than \$s and \$r in Distributing 2 shares actually being held on the distribution date by Controlled 2 and Distributing 1. As a true-up mechanism to correct for market volatility, either Distributing 2 or Controlled 2, as the case may be, will pay to the other party as soon as practicable after the Controlled 2 Distribution (i) an amount in cash up to \$aa and (ii) to the extent the value discrepancy exceeds such cash payment, a promissory note with a principal amount equal to this discrepancy ((i) and (ii) together, the “True-up Payment”). The promissory note will bear an interest rate of bb percent for a term of three years with payments due quarterly.

No fractional shares of Controlled 2 stock will be issued in the Controlled 2 Distribution. Instead, all fractional shares of Controlled 2 stock that Distributing 2 shareholders otherwise would be entitled to receive will be aggregated by a transfer agent and, as soon as practicable following the effective time of the Controlled 2 Distribution, will be sold at the prevailing price on the Exchange. Any Distributing 2 shareholder entitled to receive a fractional share of Controlled 2 stock will be entitled to receive a cash payment in an amount equal to the shareholder’s proportionate interest in the net proceeds from the open market sale.

Once the Controlled 2 Distribution occurs, the separation of Business A from Business B will be complete, except for the Retained Stock and the Continuing Relationships described below.

- (xxv) Following the Controlled 2 Distribution, Distributing 2 will merge with and into Newco, a newly formed State C corporation, with Newco as the surviving corporation (the “Merger”). Distributing 2 will change its name to Newco.

Following the Proposed Transaction, the Distributing 2 Group and the Controlled 2 Group will have certain continuing relationships following the Proposed Transaction (the “Continuing Relationships”). The Continuing Relationships generally fall into three categories: (i) those involving obligations that arose or will arise for a taxable period ending on or before the Controlled 2 Distribution or for a taxable period beginning before and ending after the Controlled 2 Distribution where the obligations do not become fixed and ascertainable until after the Controlled 2 Distribution (the “Separation Agreements”); (ii) those involving obligations that will arise after the Controlled 2 Distribution and relate to transitional and administrative support services that the Controlled 2 Group will provide to the Distributing 2 Group, or vice versa, for an interim period while each Group completes the establishment of its own administrative support and corporate service arrangements (the “Transitional Agreements”); and (iii) agreements involving obligations that will arise after the Controlled 2 Distribution and relate to the on-going operational and business services that the Controlled 2 Group has chosen to obtain from the Distributing 2 Group, or that the Distributing 2 Group has chosen to obtain from the Controlled 2 Group, in each case as its third party vendor, for the period of time and on the terms and conditions the parties will have specifically negotiated for those services.

Apart from payments made under the Transitional Agreements (the “Transitional Costs”), payments made in connection with all Continuing Relationships between the Distributing 2 Group and the Controlled 2 Group will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm’s length or terms and conditions comparable to those that would be arrived at by parties bargaining at arm’s length.

## **Representations**

### **Controlled 1 Contribution and Controlled 1 Distribution**

Distributing 2 makes the following representations for the Controlled 1 Contribution and Controlled 1 Distribution:

- (a) Any indebtedness owed by Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) to Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) after the Controlled 1 Distribution will not constitute stock or securities.

(b) No part of the consideration distributed by Distributing 1 will be received by Distributing 2 as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.

(c) The five years of financial information submitted for Business D conducted by Distributing 1 and for Business C conducted by LLC 1 is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.

(d) Neither Business D conducted by Distributing 1 nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Controlled 1 Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Controlled 1 Distribution, Distributing 1 will have been the principal owner of the goodwill and significant assets of Business D and will continue to be the principal owner following the Controlled 1 Distribution.

(e) Neither Business C conducted by LLC 1 nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Controlled 1 Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Controlled 1 Distribution, LLC 1 will have been the principal owner of the goodwill and significant assets of Business C and will continue to be the principal owner following the Controlled 1 Distribution.

(f) Apart from the Continuing Relationships, Distributing 1 will continue the active conduct of Business D, independently and with its separate employees, following the Controlled 1 Distribution.

(g) Apart from the Continuing Relationships, LLC 1 (the partnership through which Controlled 1 will be treated as conducting Business C) will continue the active conduct of Business C, independently and with its separate employees, following the Controlled 1 Distribution.

(h) The Controlled 1 Distribution will be carried out to facilitate the Controlled 2 Distribution, which will be carried out: (i) to increase the aggregate value of the separately traded Distributing 2 stock and Controlled 2 stock over the value the Distributing 2 stock would have absent the Proposed Transaction and consequently (a) enhance the Distributing 2 equity-based compensation programs for employees of Business B and (b) make the Distributing 2 stock more attractive as acquisition currency; (ii) to create a separate, publicly traded stock for Business A and consequently (a) permit the creation of equity-based compensation programs for employees of Business A apart from Business B and (b) permit stock representing only Business A to be used as acquisition currency; and (iii) to permit Distributing 2 to

optimize the capital structure of Business B. The Controlled 1 Distribution is motivated in whole or substantial part by these corporate business purposes.

(i) The Controlled 1 Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing 1 or Controlled 1 or both.

(j) The total adjusted basis and the fair market value of the assets transferred to Controlled 1 in the Controlled 1 Contribution will equal or exceed the sum of (i) the total amount of any liabilities assumed (as determined under § 357(d)) by Controlled 1 and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing 1 and transferred to its creditors in connection with the reorganization.

(k) Any liabilities assumed (as determined under § 357(d)) by Controlled 1 in the Controlled 1 Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(l) The total fair market value of the assets transferred to Controlled 1 in the Controlled 1 Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled 1 in connection with the Controlled 1 Contribution, (ii) the amount of any liabilities owed to Controlled 1 by Distributing 1 that are discharged or extinguished in connection with the Controlled 1 Contribution, and (iii) the amount of any cash and the fair market value of any other property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 1 in the Controlled 1 Contribution. The fair market value of the assets of Controlled 1 will exceed the amount of its liabilities immediately after the Controlled 1 Contribution.

(m) No intercorporate debt will exist between Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) and Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) at the time of, or after, the Controlled 1 Distribution, other than intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business or as a result of the Continuing Relationships.

(n) Apart from the Transitional Costs, payments made in connection with all Continuing Relationships between Distributing 1 (or any entity controlled directly or indirectly by Distributing 1) and Controlled 1 (or any entity controlled directly or indirectly by Controlled 1) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length or terms and conditions comparable to those that would be arrived at by parties bargaining at arm's length.

(o) Immediately before the Controlled 1 Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as

published in T.D. 8597). Further, any excess loss account that Distributing 1 has in the Controlled 1 stock or the stock of any direct or indirect subsidiary of Controlled 1 will be included in income immediately before the Controlled 1 Distribution to the extent required by regulations (see § 1.1502-19). At the time of the Controlled 1 Distribution, Distributing 1 will not have an excess loss account in the stock of Controlled 1 or the stock of any direct or indirect subsidiary of Controlled 1.

(p) No two parties to the Controlled 1 Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(q) For purposes of § 355(d), immediately after the Controlled 1 Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 1 Distribution.

(r) For purposes of § 355(d), immediately after the Controlled 1 Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 1 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 1 Distribution or (ii) attributable to distributions on Distributing 1 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 1 Distribution.

(s) The Controlled 1 Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 1 or Controlled 1 (including any predecessor or successor of any such corporation).

(t) Immediately after the transaction (as defined in § 355(g)(4)), either (1) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Distributing 1 or Controlled 1, (2) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (3) neither Distributing 1 nor Controlled 1 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(u) There is no regulatory, legal, contractual, or economic compulsion or requirement that asset contributions be made as a condition of the Controlled 1

Distribution. The fact that the value of Distributing 1 will decrease as a result of the Controlled 1 Distribution was not a consideration in the decision to contribute property to Distributing 1. The Controlled 1 Distribution is not contingent on there being contributed to Distributing 1 assets having a specified (or roughly specified) value.

(v) The value given by Distributing 1 to Distributing 2 for Distributing 2 stock in the Distributing 1 Taxable Purchase, taking into account the True-Up Payment and the Controlled 2 Stock Cancellation, will equal the price a third party would pay to Distributing 2 for the same number of shares of Distributing 2 stock.

Controlled 2 Contribution and Controlled 2 Distribution

Distributing 2 makes the following representations for the Controlled 2 Contribution and Controlled 2 Distribution:

(w) Any indebtedness owed by Controlled 2 (or any entity controlled directly or indirectly by Controlled 2) to Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) after the Controlled 2 Distribution will not constitute stock or securities.

(x) No part of the consideration distributed by Distributing 2 will be received by a Distributing 2 shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.

(y) The five years of financial information submitted on behalf of Business E conducted by LLC 5 and Business F conducted by DRE 5 is representative of the present operations of each business, and there have been no substantial operational changes in either business since the date of the last financial statements submitted.

(z) Neither Business E conducted by LLC 5 nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Controlled 2 Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the Controlled 2 Distribution, LLC 5 will have been the principal owner of the goodwill and significant assets of Business E and will continue to be the principal owner following the Controlled 2 Distribution.

(aa) Neither Business F conducted by DRE 5 nor control of an entity conducting this business will have been acquired during the five-year period ending on the date of the Controlled 2 Distribution in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Reg. § 1.355-3) in whole or in part. Throughout the five-year period ending on the date of the DRE 9 Contribution, DRE 5 will have been the principal owner of the goodwill and significant assets of Business F. Immediately after the DRE 9 Contribution, and at the time of the Controlled 2 Distribution, DRE 9 will be the principal owner of the goodwill and significant assets of

Business F and will continue to be the principal owner following the Controlled 2 Distribution.

(bb) Apart from the Continuing Relationships, LLC 5 (the partnership through which Distributing 2 will be treated as conducting Business E) will continue the active conduct of Business E, independently and with its separate employees, following the Controlled 2 Distribution.

(cc) Apart from the Continuing Relationships, DRE 9 (the partnership through which Controlled 2 will be treated as conducting Business F) will continue the active conduct of Business F, independently and with its separate employees, following the Controlled 2 Distribution.

(dd) The Controlled 2 Distribution will be carried out: (i) to increase the aggregate value of the separately traded Distributing 2 stock and Controlled 2 stock over the value the Distributing 2 stock would have absent the Proposed Transaction and consequently (a) enhance the Distributing 2 equity-based compensation programs for employees of Business B and (b) make the Distributing 2 stock more attractive as acquisition currency; (ii) to create a separate, publicly traded stock for Business A and consequently (a) permit the creation of equity-based compensation programs for employees of Business A apart from Business B and (b) permit stock representing only Business A to be used as acquisition currency; and (iii) to permit Distributing 2 to optimize the capital structure of Business B. The Controlled 2 Distribution is motivated in whole or substantial part by these corporate business purposes.

(ee) The Controlled 2 Distribution will not be used principally as a device for the distribution of the earnings and profits of Distributing 2 or Controlled 2 or both.

(ff) The total adjusted basis and the fair market value of the assets transferred to Controlled 2 in the Controlled 2 Contribution will equal or exceed the sum of (i) the total liabilities assumed (as determined under § 357(d)) by Controlled 2 and (ii) the total amount of any money and the fair market value of any other property (within the meaning of § 361(b)) received by Distributing 2 and transferred to its creditors in connection with the reorganization.

(gg) Any liabilities assumed (as determined under § 357(d)) by Controlled 2 in the Controlled 2 Contribution will have been incurred in the ordinary course of business and will be associated with the assets transferred.

(hh) The total fair market value of the assets transferred to Controlled 2 in the Controlled 2 Contribution will exceed the sum of (i) the amount of any liabilities assumed (as determined under § 357(d)) by Controlled 2 in connection with the Controlled 2 Contribution, (ii) the amount of any liabilities owed to Controlled 2 by Distributing 2 that are discharged or extinguished in connection with the Controlled 2 Contribution, and (iii) the amount of any cash and the fair market value of any other

property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing 2 in the Controlled 2 Contribution. The fair market value of the assets of Controlled 2 will exceed the amount of its liabilities immediately after the Controlled 2 Contribution.

(ii) No intercorporate debt will exist between Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) and Controlled 2 (or any entity controlled directly or indirectly by Controlled 2) at the time of, or after, the Controlled 2 Distribution, other than the Pension Note, the promissory note for the True-Up Payment (if necessary), and other than intercompany loans or other obligations that have arisen, or will arise, in the ordinary course of business or as a result of the Continuing Relationships.

(jj) Apart from the Transitional Costs, payments made in connection with all Continuing Relationships between Distributing 2 (or any entity controlled directly or indirectly by Distributing 2) and Controlled 2 (or any entity controlled directly or indirectly by Controlled 2) will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length or terms and conditions comparable to those that would be arrived at by parties bargaining at arm's length.

(kk) Immediately before the Controlled 2 Distribution, items of income, gain, loss, deduction, and credit will be taken into account as required by the applicable intercompany transaction regulations (see § 1.1502-13 and -14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing 2 has in the Controlled 2 stock or the stock of any direct or indirect subsidiary of Controlled 2 will be included in income immediately before the Controlled 2 Distribution to the extent required by regulations (see § 1.1502-19). At the time of the Controlled 2 Distribution, Distributing 2 will not have an excess loss account in the stock of Controlled 2 or the stock of any direct or indirect subsidiary of Controlled 2, and no member of the Distributing 2 Group will have an excess loss account in any member of the Controlled 2 Group.

(ll) No two parties to the Controlled 2 Distribution are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(mm) For purposes of § 355(d), immediately after the Controlled 2 Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 2 Distribution.

(nn) For purposes of § 355(d), immediately after the Controlled 2 Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Controlled 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Controlled 2 stock, that was either (i) acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 2 Distribution or (ii) attributable to distributions on Distributing 2 stock or securities that were acquired by purchase (as defined in § 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Controlled 2 Distribution.

(oo) The Controlled 2 Distribution is not part of a plan or series of related transactions (within the meaning of § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of § 355(d)(4)) in Distributing 2 or Controlled 2 (including any predecessor or successor of any such corporation).

(pp) Immediately after the transaction (as defined in § 355(g)(4)), either (1) no person will hold a 50-percent or greater interest (within the meaning of § 355(g)(3)) in Distributing 2 or Controlled 2, (2) if any person holds a 50-percent or greater interest (within the meaning of § 355(g)(3)) in any disqualified investment corporation (within the meaning of § 355(g)(2)), such person will have held such interest in such corporation immediately before the transaction, or (3) neither Distributing 2 nor Controlled 2 will be a disqualified investment corporation (within the meaning of § 355(g)(2)).

(qq) The receipt by Distributing 2 shareholders of cash in lieu of fractional shares of Controlled 2 stock resulting from the open market sale of the fractional shares has been arranged solely for the purpose of avoiding the expense and inconvenience to Distributing 2 of issuing fractional shares and does not represent separately bargained-for consideration. It is intended that the total cash consideration received by the shareholders of Distributing 2 from the open market sale of their fractional shares will not exceed one percent of the total consideration that will be distributed in the Controlled 2 Distribution. It is also intended that no Distributing 2 shareholder will receive cash in an amount equal to or greater than the value of one full share of Controlled 2 common stock. Controlled 2 is not aware of any overall plan (within the meaning of § 355(e)) to acquire an ownership interest in Controlled 2 through the purchase of the bundled Controlled 2 shares sold in connection with the issuance of cash in lieu of fractional shares.

(rr) The Distributed Cash Proceeds paid by Distributing 2 to creditors in the Debt Payment will not exceed the weighted quarterly average of the Distributing 2 debt owed to third parties for the 12-month period ending on the close of business on or about Date 1, the last full business day before the date on which the Distributing 2 Board of Directors initially discussed the potential separation of Business A from

Business B. The term “Distributing 2 debt” refers only to debt of Distributing 2 owed to unrelated parties.

(ss) The value given by Controlled 2 to Distributing 2 for Distributing 2 stock in the Controlled 2 Contribution, taking into account the True-Up Payment and the Controlled 2 Stock Cancellation, will equal the price a third party would pay to Distributing 2 for the same number of shares of Distributing 2 stock.

(tt) The Merger will qualify as a reorganization under § 368(a)(1)(F).

#### Additional Representations

Distributing 2 makes the following additional representations:

(uu) The Distributing 1 Equity Retention will provide Distributing 1 with additional regulatory capital and improve the credit rating of Business A.

(vv) The Controlled 2 Equity Retention will help Business A fund various corporate purposes and improve the credit rating of Business A.

(ww) With the exception of Individual A, who will serve as executive chairman and chairman of the board of both Distributing 2 and Controlled 2 following the Controlled 2 Distribution, Individual B, who will serve as chief executive officer of Controlled 2 and may serve as a director of Distributing 2, and Individual C, who will serve as chief financial officer of Distributing 2 and may serve as a director of Controlled 2, none of the Controlled 2 directors or officers will serve as directors or officers of Distributing 2 as long as Controlled 2 holds the Retained Stock. Individual A will serve both corporations because of his deep knowledge of, and experience with, both Business B and Business A. Individual B may serve as a director on the Distributing 2 board to give it the benefit of expertise he gained by having a key role in the startup and growth of Business B, the business that Distributing 2 will conduct following the Separation. Individual C may serve as a director on the Controlled 2 board because he has served as chief financial officer of Controlled 2, and this experience would help with the transition of Controlled 2 to separate company status.

(xx) With the exception of Individual A, who will serve as an officer and director of both Distributing 1 and Distributing 2 following the Controlled 2 Distribution, none of the Distributing 1 directors or officers will serve as directors or officers of Distributing 2 as long as Distributing 1 holds the Retained Stock. Individual A will serve both corporations because of his deep knowledge of, and experience with, both Business B and Business A.

(yy) Distributing 1 and Controlled 2 each will dispose of its shares of Retained Stock as soon as a disposition is warranted consistent with the business purposes for

the Retained Stock, but in no event later than five years after the Controlled 2 Distribution.

(zz) The aggregate fair market value of the consideration to be paid by Distributing 1 to Distributing 2 in the Distributing 1 Taxable Purchase (net of liabilities assumed, within the meaning of § 357(d)) will exceed the aggregate fair market value of the assets to be received by Distributing 1 (net of liabilities assumed, within the meaning of § 357(d)) in the exchange.

(aaa) Under § 731(a) and (b), no gain or loss will be recognized by LLC 5 or its members, Sub 5 and Corporation A, on the LLC 5 Partnership Distributions.

(bbb) The Sub 5 LLC Conversion will qualify as a complete liquidation of Sub 5 under § 332, and no gain or loss will be recognized by Sub 5 or Distributing 2 on the Sub 5 LLC Conversion under §§ 332(a) and 337(a).

## **Rulings**

### **Controlled 1 Contribution and Controlled 1 Distribution**

Based solely on the information submitted and the representations made, we rule as follows on the Controlled 1 Contribution and Controlled 1 Distribution:

(1) The Controlled 1 Contribution, followed by the Controlled 1 Distribution, will be a reorganization under § 368(a)(1)(D). Distributing 1 and Controlled 1 will each be “a party to a reorganization” within the meaning of § 368(b).

(2) No gain or loss will be recognized by Distributing 1 on the Controlled 1 Contribution (§§ 361(a) and 357(a)).

(3) No gain or loss will be recognized by Controlled 1 on the Controlled 1 Contribution (§ 1032(a)).

(4) The basis of each asset received by Controlled 1 in the Controlled 1 Contribution will equal the basis of that asset in the hands of Distributing 1 immediately before the Controlled 1 Contribution (§ 362(b)).

(5) The holding period of each asset received by Controlled 1 in the Controlled 1 Contribution will include the period during which Distributing 1 held that asset (§ 1223(2)).

(6) No gain or loss will be recognized by Distributing 1 on the Controlled 1 Distribution (§ 361(c)(1)).

(7) The Taxable Purchase Excess will be a distribution to which section 301 applies and will reduce the basis Distributing 2 has in the Distributing 1 stock (§ 356(b); §§ 1.1502-13(f)(2)(ii) and 1.1502-32(b)(2)(iv)).

(8) No gain or loss will be recognized by (and no amount will be included in the income of) Distributing 2 on the Controlled 1 Distribution (§ 355(a)(1)).

(9) The aggregate basis of the Distributing 1 stock and the Controlled 1 stock in the hands of Distributing 2 immediately after the Controlled 1 Distribution will equal the aggregate basis of the Distributing 1 stock held by Distributing 2 immediately before the Controlled 1 Distribution, allocated between the stock of Distributing 1 and Controlled 1 in proportion to the fair market value of each immediately following the Controlled 1 Distribution in accordance with § 1.358-2(a)(2) (§ 358(b)(2) and (c)).

(10) The holding period of the Controlled 1 stock received by Distributing 2 in the Controlled 1 Distribution will include the holding period of the Distributing 1 stock on which the Controlled 1 Distribution is made, provided the Distributing 1 stock is held as a capital asset on the date of the Controlled 1 Distribution (§ 1223(1)).

(11) Earnings and profits, if any, will be allocated between Distributing 1 and Controlled 1 in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(f)(2).

#### Controlled 2 Contribution and Controlled 2 Distribution

Based solely on the information submitted and the representations made, we rule as follows on the Controlled 2 Contribution and Controlled 2 Distribution:

(12) The Controlled 2 Contribution, followed by the Controlled 2 Distribution, will be a reorganization under § 368(a)(1)(D). Distributing 2 and Controlled 2 will each be “a party to a reorganization” within the meaning of § 368(b).

(13) No gain or loss will be recognized by Distributing 2 on the Controlled 2 Contribution (§§ 361(a), 361(b)(3), and 357(a)).

(14) No gain or loss will be recognized by Controlled 2 on the Controlled 2 Contribution (§ 1032(a)).

(15) The basis of each asset (including each stock and membership interest) received by Controlled 2 in the Controlled 2 Contribution will equal the basis of that asset in the hands of Distributing 2 immediately before the Controlled 2 Contribution (§ 362(b)).

(16) The holding period of each asset (including each stock and membership interest) received by Controlled 2 in the Controlled 2 Contribution will include the period during which Distributing 2 held that asset (§ 1223(2)).

(17) No gain or loss will be recognized by Distributing 2 on the Controlled 2 Distribution (§ 361(c)(1)).

(18) No gain or loss will be recognized by (and no amount will be included in the income of) any shareholder of Distributing 2 on the Controlled 2 Distribution (§ 355(a)(1)).

(19) The aggregate basis of the Distributing 2 stock and the Controlled 2 stock in the hands of each shareholder of Distributing 2 (including any fractional share interest in Controlled 2 to which the shareholder may be entitled) immediately after the Controlled 2 Distribution will equal the aggregate basis of the Distributing 2 stock held by the shareholder immediately before the Controlled 2 Distribution, allocated between the stock of Distributing 2 and Controlled 2 in proportion to the fair market value of each immediately following the Controlled 2 Distribution in accordance with § 1.358-2(a)(2) (§ 358(b)(2) and (c)).

(20) The holding period of the Controlled 2 stock received by each shareholder of Distributing 2 in the Controlled 2 Distribution (including any fractional share interest in Controlled 2 to which the shareholder may be entitled) will include the holding period of the Distributing 2 stock on which the Controlled 2 Distribution is made, provided the Distributing 2 stock is held by the shareholder as a capital asset on the date of the Controlled 2 Distribution (§ 1223(1)).

(21) Earnings and profits, if any, will be allocated between Distributing 2 and Controlled 2 in accordance with § 312(h) and §§ 1.312-10(a) and 1.1502-33(e)(3).

(22) The receipt by Distributing 2 shareholders of cash in lieu of fractional shares of Controlled 2 common stock will be treated for Federal income tax purposes as if the fractional shares had been distributed to the Distributing 2 shareholders as part of the Controlled 2 Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss), if any (determined using the basis allocated to the fractional shares in ruling (19) and the holding period attributed to the fractional shares in ruling (20)), will be treated as a capital gain (or loss), provided the stock was held as a capital asset by the selling shareholder (§ 1001).

(23) Following the Controlled 2 Distribution, Controlled 2 will not be a successor of Distributing 2 for purposes of § 1504(a)(3). Therefore, Controlled 2 and its direct and indirect subsidiaries that are “includible corporations” (under § 1504(b)) and satisfy the ownership requirements of § 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated Federal income tax return with Controlled 2 as the common parent.

(24) Except for purposes of § 355(g), payments made between any of Distributing 2 and Controlled 2 and their respective affiliates under the Separation Agreements regarding liabilities, indemnities, the True-up Payment, or other obligations

that (i) have arisen or will arise for a taxable period ending on or before the Controlled 2 Distribution or for a taxable period beginning before and ending after the Controlled 2 Distribution and (ii) will not become fixed and ascertainable until after the Controlled 2 Distribution, will be treated as occurring before the Controlled 2 Distribution (*cf. Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S. Ct. 71, 97 L. Ed. 6, 1952-2 C.B. 136 (1952)) (tax character of later transaction will derive from earlier, related transaction); Rev. Rul. 83-73, 1983-1 C.B. 84).

(25) The Retained Stock will not adversely affect qualification of the Controlled 2 Distribution under § 355 and will not be in pursuance of a plan having as one of its principal purposes the avoidance of Federal income tax.

(26) The Controlled 2 stock issued by Controlled 2 to Distributing 2 in the Controlled 2 Contribution that will be (i) distributed by Distributing 2 to Controlled 2 and Distributing 1 in the Controlled 1 Distribution and then (ii) returned to Controlled 2 in the Controlled 2 Stock Cancellation will be disregarded for Federal income tax purposes.

#### Distributing 1 Taxable Purchase

Based solely on the information submitted and the representations made, we rule as follows on the Distributing 1 Taxable Purchase:

(27) The Distributing 1 Taxable Purchase will result in gain or loss recognition to Distributing 1 and Distributing 2 under § 1001.

(28) Each asset received by Distributing 1 in the Distributing 1 Taxable Purchase will receive a cost basis under § 1012.

(29) Each asset received by Distributing 2 in the Distributing 1 Taxable Purchase will receive a cost basis under § 1012.

(30) The holding period for each asset received by Distributing 1 in the Distributing 1 Taxable Purchase will start on the date of the Distributing 1 Taxable Purchase.

(31) The holding period for each asset received by Distributing 2 in the Distributing 1 Taxable Purchase will start on the date of the Distributing 1 Taxable Purchase.

(32) No gain or loss will be recognized by Distributing 2 on the issuance of its shares to Distributing 1 in the Distributing 1 Taxable Purchase (§ 1032(a)).

#### **Caveats**

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or

referenced in this letter. In particular, no opinion is expressed regarding: (i) whether the Controlled 1 Distribution and the Controlled 2 Distribution each satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the Controlled 1 Distribution and the Controlled 2 Distribution are being used principally as a device for the distribution of the earnings and profits of Distributing 1, Controlled 1, Distributing 2, Controlled 2, or any combination thereof (see § 355(a)(1)(B) and § 1.355-2(d)); (iii) whether the Controlled 1 Distribution and the Controlled 2 Distribution are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in Distributing 1, Distributing 2, Controlled 1 or Controlled 2 (see § 355(e) and § 1.355-7); and (iv) the Federal income tax treatment of the Transitional Costs, the Merger, Steps (v) through (xvii), and the LLC 7 Contribution.

### **Procedural Matters**

This ruling letter is directed only to the taxpayers who requested it. See § 6110(k)(3), which provides that it may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling. In accordance with the power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Richard K. Passales  
Senior Counsel, Branch 4  
Associate Chief Counsel (Corporate)

cc: